

**Statement To**

**Subcommittee on Housing and Community Opportunity  
Financial Services Committee  
United States House of Representatives**

**Testimony on the Impacts of Late Housing Assistance Payments  
on Tenants and Owners in the Project-based Rental Assistance Program**

**By Carolann Livingstone, Vice-President/East  
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October 17, 2007**

**Prepared Statement of Ms. Carolann Livingstone  
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**Subcommittee on Housing and Community Opportunity  
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Wednesday, October 17, 2007**

On behalf of the National Alliance of HUD Tenants (NAHT), I want to thank Chairwoman Waters, Ranking Member Capito, and members of the Subcommittee for inviting our testimony today. My name is Carolann Livingstone. I am a tenant of project-based Section 8 housing; the President of the 1890 House Apartments Tenants Association in Providence, Rhode Island; a co-founder of the Rhode Island HUD Tenant Project; and the Vice President/East of the NAHT Board.

As you know, NAHT is the nation's only membership organization representing the two million families who live in privately-owned, HUD assisted multifamily housing, including the 1.5 million families, elderly and disabled people in apartments receiving project-based Section 8 assistance. The elected NAHT Board represents a membership including voting member tenant groups and areawide coalitions in 23 states.

The NAHT Board met with Subcommittee staff in September to urge that today's hearing be held. We are very grateful that the Subcommittee has responded so quickly. For today's hearing, NAHT convened two national conference calls to solicit input from tenants and affiliated organizations across the country. I am honored for the opportunity to make these tenant voices heard before the Subcommittee today. Our comments follow the questions provided to NAHT by the Subcommittee.

**1) In what way do you rely on the project-based rental assistance program?**

For me and my nine year old son, Section 8 housing is literally a matter of life and death. Like many thousands of Section 8 families across America, I was once homeless, living on the street for one and a half years before I could pull my life together. Section 8 housing provided the vital step up so I could stabilize my life, provide a decent home for my son, find a job at a local church, and take college courses to move up and out of poverty.

Well over half the 1.5 million project-based Section 8 households in America are very low income elderly and disabled people; the rest are families with children living on public assistance or with low wage jobs. We have no "choice" to rent market rate apartments, without subsidies to keep rents affordable. A major portion of the low income families with children, like me, were homeless or living in shelters before moving into life-saving Section 8 housing. For many of us, project-based Section 8 is the difference between having a home and living on the street.

Rents paid by Section 8 tenants (based on 30% of household income) typically cover only 25-35% of the actual costs of operating Section 8 apartments; HUD pays the difference to the owners through the Section 8 HAP contract. If HUD were to terminate Section 8 payments in the middle of the contract year, and tenants are forced to pay the difference, it would mean an

overnight increase of 3 to 4 times what we are paying now, forcing tenants out on the street. NAHT has already received reports of owners doing exactly that in New York, Ohio and Pennsylvania.

Today, more than 90% of project-based Section units, including the many in long-term contracts under HUD's Mark to Market, Mark Up to Market, or Preservation Programs, are "subject to annual appropriation by Congress." That means that more than 1,350,000 low income households are potentially affected by the Section 8 funding crisis. *If Congress and HUD do not provide \$2.5 billion out of an \$8 billion need in 2008, then 30% of these households—that's 470,000 low income families, elderly and disabled people—could lose their homes overnight.*

**2) What is your understanding of the reasons behind why the Department has been unable to make HAP's in a timely fashion? How does the current situation with late HAP's compare to prior years in which HAPs were late?**

To our knowledge, this is the first time in the history of the project-based Section 8 program that anything like this has happened. I was part of the NAHT Board's meeting with Acting Deputy Assistant Secretary John Garvin and other HUD officials on September 14, 2007, to hear HUD's explanation of this crisis. HUD officials claimed that the late payments from July had been largely cleared up, after OMB released \$1.4 billion which had been delayed in June and July.

But their explanation of the "funding shortfall" which appeared in the 4<sup>th</sup> Quarter, when money for Section 8 literally ran out, was disconcerting, to say the least. They said that *no one at HUD had any idea of how much money was actually needed* to fully fund all Section 8 contracts for one year. In fact, HUD had to farm out this analysis to an outside contractor. HUD acknowledged that Congress had asked for the contractor's report by September 15, in time for the FY 2008 Appropriations bill, but told us that the draft report wouldn't be ready until mid-November.

To fund contracts in the 4<sup>th</sup> Quarter, HUD said they had taken money out of 40 year, long-term Section 8 contracts obligated to other owners. We asked them if this was legal; they said they had a legal opinion from the HUD Office of General Counsel that it was, and that HUD didn't have to pay these funds back. Our understanding is that as much as \$1.2 billion was transferred in this way. They did not say whether these owners have been notified of a reduction in their contracts.

Yet even this amount was not enough to fund all contracts that came up in the July-September 2007 quarter. So HUD is only providing short-term 3-6 month "stub" contracts with available funds, and telling owners that the balance of their one year contracts may or may not be provided by Congress, during fiscal year 2008.

We asked if HUD had an estimate of how much would be needed next year, since the House and Senate Appropriations bills for FY 2008 have already passed each chamber and appear to be short. HUD officials said the number could be anywhere from zero to \$2 billion or even more; they really didn't know. Nor was HUD able or willing to commit to ask for whatever shortfall their contractor might identify, sometime in November or beyond. We have since heard that HUD admits the amount is \$2.5 billion, but neither HUD nor OMB will make an

official appropriations request. Instead, President Bush has vowed to veto even the inadequate HUD Appropriations bills before the Congress.

Madame Chair, the inability of the Administration to provide answers to these questions or to request the needed funds is deeply disturbing. They are playing with peoples' lives! Obviously, with a \$2.5 billion shortfall out of an \$8 billion need, not providing enough money in FY 2008 will result in mass displacement and homelessness for tenants as owners are forced out of the program.

If tenants are more than 10 days late on our rent, we are threatened with eviction. Yet OMB and HUD were two months late with \$1.4 billion--will the responsible officials be held accountable? What steps will HUD take to make sure this doesn't happen again?

If low income tenants inaccurately report our income, we can be evicted and even prosecuted for fraud. Yet HUD and OMB will not formally acknowledge that \$8 billion is needed to honor Section 8 contractual obligations. Will the Administration at least admit the problem and ask Congress for what is truly needed?

The way this crisis has developed raises a legitimate question whether some in the Administration are deliberately planning a "train wreck" to destroy the project-based Section 8 housing system next year. We know that OMB officials, even in prior Administrations, have favored the conversion of project-based Section 8 into Vouchers, but there is no sign the Administration even plans to ask for additional Voucher funds for 470,000 families who could suddenly lose our homes. We ask that Congress dig deeper into this crisis to answer these questions.

**3) How have you personally been impacted by late HAPs? Has the owner of your housing development entered into a "short-funding" contract, i.e., a contract in which the funding is not guaranteed for a full 12 months? How have late HAP's affected your neighbors or other tenants in your organization?**

My building already suffers from inadequate repairs, maintenance, and management. Delayed or short-funded Section 8 payments can only make this worse. We expect even worse conditions, lower REAC scores, and potential HUD enforcement or even termination down the road.

In addition, my building is in a prime downtown Providence location. The owner will be able to "opt out" of his Section 8 contract by January 2011, and either convert to higher rent housing or tear down the building and replace it with more profitable new development. Our tenants association and the Rhode Island HUD Tenant Project, aided by a Rhode Island Right to Purchase law which we passed last year, hope to preserve our building as Section 8 family housing. But the Section 8 funding crisis dramatically increases the chances that our owner will opt out or be terminated by HUD, leaving no Section 8 contract to make affordable housing feasible.

NAHT tenants and affiliated local organizations across the country are already reporting adverse effects on tenants from the crisis so far. Some examples:

- At Morris Heights Mews *in the Bronx*, the owner stopped making long overdue repairs and maintenance and halted utility and monthly mortgage payments in

August 2007, due to HUD's payment delays. Recently, *management has begun to charge HUD's portion of the rent to tenants*, many of whom are now paying market rents out of fear of eviction. Tenants are now afraid the owner will opt out of the expiring Section 8 contract in February 2008 due to HUD's inability to guarantee payments, according to the Urban Homesteading Assistance Board.

- At Washington, Square West Apartments *in Philadelphia, AIMCO (which owns as much as 115,000 units of project-based Section 8 housing, 7% of the total) has forced tenants to sign "month to month" leases effective December 1, 2007.* One tenant who contacted the NAHT office could see a rent increase from \$198 to \$1,015 overnight should HUD fail to provide Section 8 payments, at any time after December 31 (See attached excerpt from Model Lease and Rent Increase request).
- *Senior citizens at a building in Cleveland were sent a letter notifying tenants that they would have to pay full market rents due to the HAP funding shortfall.* The Cleveland Tenants Organization and Legal Aid intervened to get a correction letter, but tenants were panicked for 24 hours
- According to the Texas Tenants Union, tenants at Eastwood Terrace tenants in Nacogdoches reported high weeds and slow maintenance this summer. They also had problems with security no longer making rounds at night. The grass was cut at the end of August, around the time TTU heard landlords were getting paid again. At Edinburg Village in Edinburg, tenants reported that the manager was hardly in the office this summer and rehab stopped.
- The Coalition on Housing and Homelessness in Ohio (COHHIO) reports delays in utility allowance checks for tenants at Westover Village in Cincinnati from management as a result of a HAP shortfall, forcing tenants to pay higher amounts. COHHIO also reports a nonprofit owner of a 180 unit elderly and disabled tenant building in Cleveland who is "very disturbed" by HUD's short-funding letter and may not be able to operate the buildings.
- NAHT Board members and affiliates from high or rising market areas, such as Placer County, California, or Eastern Massachusetts, report that many owners who have been renewing their Section 8 contracts one year at a time to "keep their options open" may now throw up their hands and "opt out" rather than enter into HUD's Mark Up to Market program to preserve affordable housing

Perhaps the worst impact as tenants become aware of this crisis is the gnawing fear and terror of becoming homeless—for many of us, *becoming homeless again*. In my state of Rhode Island the one large homeless shelter has been demolished. As I look out my living room window I can see people sleeping on the sidewalk. Last night, there was a homeless woman and her child living there, in the rubble. What will happen if HUD cuts off funds and more are sent into the street? That can easily be me—that *was* me, not too long ago—I am asking, for all of us, that Congress and HUD solve this crisis now.

#### **4) How have late HAP's changed your perception of or confidence in the project-based rental assistance program?**

HUD's inability to provide accurate and timely information about its funding needs is almost as disturbing as the late payments and Section 8 shortfall themselves. As the crisis has unfolded, neither owners, tenants, Congress, nor HUD field staff have been correctly informed about what is going on. Just last weekend, HUD officials in New York attending the New York

Tenants and Neighbors Annual Conference denied there was anything more than a “temporary shortfall” that would soon clear up—obviously, they, too, are misinformed.

HUD’s explanation that late HAP payments last summer were due to an undefined “administrative snafu” is not enough. Nor are “late payments” even the central problem; the deeper crisis is the \$2.5 billion shortfall which emerged during FY 2007. Were OMB and/or HUD deliberately holding up 3<sup>rd</sup> Quarter payments to push owners out of the program, stretching funds it knew were inadequate into the 4<sup>th</sup> Quarter? Why has neither agency to date admitted, publicly, that there is a \$2.5 billion shortfall? What did Department and OMB officials know about this emerging problem, and when did they know it? What contingency plans, if any, have they made for the hundreds of thousands of people like me who could be made homeless if contracts are shut off?

HUD has blamed the “shortfall” on a reported Office of General Counsel opinion last year, citing the Anti-Deficiency Act (ADA), which suddenly forced HUD to short-fund Section 8 contracts. This is not convincing. If HUD had asked for enough money in FY 2007 in the first place, the ADA would not have been problem. Even if OGC changed the standards for funding 12 month contracts, HUD could have asked for a supplemental appropriation at that time. If HUD and OMB simply request enough money to fully fund all Section 8 contracts for one year, the ADA problem will go away.

*We ask that the Subcommittee investigate further how the late payments and the shortfall were allowed to happen, so that a repeat of this fiasco can be avoided in the future. We recommend that the Chair and Ranking Member request an investigation by the Government Accounting Office and by HUD’s Inspector General of how this crisis developed, with remedies to avoid a recurrence and to rebuild public confidence in the project-based Section 8 program.*

Congress could start by asking HUD to produce, as a follow up to this hearing, the Office of General Counsel legal opinions regarding the application of the Anti-Deficiency Act to Section 8 renewals, and allowing permanent transfer of funds from long-term Section 8 accounts for FY 2007 short-term renewals.

**5) How will late HAP payments impact the future stability of the project-based rental assistance program, including any impact on residents of these developments?**

You don’t have to be an accounting genius to see that HUD’s math doesn’t add up. If all owners offered “stub” contracts come back in a few months for another short term contract, obviously the total demand will be \$8 billion during FY 2008—not the \$5.5 billion requested by the Administration. This means that the “train wreck” forcing early contract terminations from lack of funds will occur no later than May 2008, if Congress does not fully fund Section 8: either owners will seek funds from HUD that are simply not there and will suffer funding shortfalls, or they will “opt out” of renewals (where they can), or both. Either way, the nation will lose affordable housing. Is HUD basing its \$5.5 number on an estimate that owners will choose to opt out? Where owners can’t yet opt out, is HUD assuming that a certain number of contracts will be terminated due to lack of funds? We ask your help in getting to the bottom of these questions.

Even if Congress acts, there is a question whether HUD and OMB will be able to process the money in time. Has HUD done a cash-flow analysis of the impacts of continually renewed, short-term “stub contracts” on Section 8 funding needs for each Quarter? What is the impact of the Continuing Resolution level of funding (\$5.9 billion) for the first Quarter of FY 2008? We are also concerned that the sheer confusion and chaos resulting from multiple and overlapping contracts of varying lengths will overwhelm HUD’s already limited administrative capacity, with tenants at the losing end.

***More urgently, tenants need to know what will happen if funds are suddenly cut off by HUD in the middle of a one year Section 8 funding cycle. Will tenants receive One Year Notice, from HUD and/or the owners, before our rent payments increase? Will we receive Section 8 Enhanced Vouchers to cover rent increases? How will these Vouchers be funded? If 470,000 households are cut from project-based Section 8 next year, will HUD ask Congress for 470,000 Vouchers? Will our leases be honored, or will HUD allow owners to terminate leases if Section 8 funds are not available and tenants cannot afford to pay the full rent? We urge the Subcommittee to get written answers from HUD to these critical questions as soon as possible.***

Another real concern is the impact on the remaining supply of Section 8 housing. The nation has already lost at least 350,000 units of affordable housing since 1996, including project-based Section 8, due to owner opt outs and mortgage prepayments, according to the National Housing Trust. But owners in high or rising market areas who are facing funding uncertainty or terminations by HUD will almost certainly opt out of the program. NAHT’s local affiliates in these areas are already monitoring owners who have up till now hedged their bets with short-term contract extensions, and fully expect to see a surge of opt outs, and a permanent loss of low income housing.

**6) How should the Department resolve the current funding situation? Is “short-funding” contracts a feasible alternative to fully funding them for 12 months?**

Obviously, short-funding Section 8 contracts is no alternative to full 12 months funding. Nor can we wait for the crisis to explode to act; the consequences for tenants, owners, and lenders would be too disastrous to contemplate. The time to fully fund Section 8 to save our homes is now.

***We strongly urge the Chair and Ranking Member of the Subcommittee to write the House and Senate T-THUD Appropriations Conferees to increase project-based Section 8 funds to at least \$8 billion for FY 2008, without any cuts to other HUD programs.*** If HUD and OMB are unable or unwilling to provide a formal request or analysis to justify their estimates, we suggest that Congress multiply the average 12 month Section 8 outlay cost per unit by the number of units requiring annual funding during FY 2008, plus a small percentage factor, to approximate the funding need. That way, owners and tenants will be reasonably assured that funds will be available for the entire fiscal year. Any surplus funds can be rolled over into the next fiscal year.

***Another urgent measure is to provide resources to help inform tenants about Section 8 contract renewals and to participate in the decisions affecting their homes.*** Section 514 of the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA) authorizes HUD to spend up to \$10 million annually to involve tenants in Section 8 renewal decisions. But HUD

has failed to spend any of these funds since 2002. Commissioner Montgomery did support creation of a new grant program, TRIO, last spring, but was unable to get Appropriations Committee approval to reprogram funds at the time. This will delay TRIO funds until 2009, at the earliest.

***The Section 8 crisis makes it imperative to get information out to tenants immediately so we can engage owners and HUD to renew Section 8 contracts.*** The Stakeholders convened by HUD to advise the Department on Section 514 have proposed that HUD renew its Interagency Agreement with the Corporation for National and Community Service, a federal agency, for a \$1 million VISTA Volunteer program in HUD multifamily housing, as the quickest and most cost effective way to get Section 514 resources to organizations across the country, now that the startup of the TRIO program has been delayed for at least a year. Unfortunately, the Commissioner has rejected this request (see attached correspondence). The Stakeholders have also recommended legislation to get funds out to qualified nonprofits in 2008, ahead of the TRIO NOFA process. We request that the Subcommittee adopt this legislation at the soonest opportunity, so tenants can better cope with the loss of their homes.

Madame Chair, homeland security begins with a home. The fear and terror of mass homelessness which HUD's negligence has caused tenants is unacceptable. Today's hearing helps restore confidence that Congress will act to help tenants Save Our Homes in the weeks ahead.